Case No: BL-2020-000952

Neutral Citation Number: [2022] EWHC 686 (Ch)
IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 25/3/2021

Before:

CHARLES MORRISON
(sitting as a Deputy Judge of the High Court)

- -

Between:

(1) MR FADHEL SALMAN HUBAIL ALNAJJAR
(2) DR ABDULSHAHEED EBRAHIM FADHUL ALI
Claimants

- and -

(1) MR DANA SAMAL MAJEED
(2) MRS SHIREEN ROAD ISMAIL
Defendants

- -
- -

Stuart Hornett (instructed by Charles Russell Speechlys) for the **Claimants**
And the **Defendant** not appearing

Hearing date: 21/22 February 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 am on 25 March 2022.

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Charles Morrison (sitting as a Deputy Judge of the High Court):

Introduction

1. The trial of this action came before me on 21 February. It was a rather one-sided affair as a direct consequence of an Order (the **Debarring Order**) made, by Leech J. sitting in this court on 18 January 2022. By virtue of the Debarring Order, the Defendants were prevented from participating in the trial and their Defence was struck out. They thus played no part in the proceedings before me.

2. Having a clear field before him, Mr Hornett who appeared for the Claimants (as he did before Leech J) proceeded to lay out his case for the various orders he sought following the demise of the ultimately unhappy partnership between the Claimants and, on his case, the first Defendant (**Mr Majeed**).

3. At the conclusion of the trial I indicated to Mr Hornett that I was prepared to make the orders sought by him, broadly in the form of a draft Order put before me. That Order was sealed and is dated 22 February. I indicated when making the trial Order that my full reasons would follow: those reasons are set out in this judgment.

The Issues

4. The court was asked to arrive at a conclusion on a number of questions, including:

   a) was there a partnership between the Claimants and Mr Majeed;

   b) if there was, was it dissolved - and if so when;

   c) how much had the Claimants contributed in capital to the partnership;

   d) were certain companies and real property assets, assets of the partnership;

   e) to what extent was Mr Majeed required to account to the Claimants in respect of rental receipts;

   f) to what extent were the Claimants entitled to the return of their capital, together with a judgment for such sums as might be due to them as represented by a return on that capital;

   g) had Mr Majeed benefitted from the earnings of the partnership to such an extent, even if not capable of precise determination, that he should carry the burden alone, for any debts of the partnership remaining unpaid; and

h) did Mr Majeed carry responsibility for certain planning law breaches in respect of partnership properties.

The Evidence

5. The Claimants relied upon their witness statements, each dated 31 December 2021, and also the evidence of their expert accountant from Grant Thornton, Mr Daniel Turner, set out in his report dated 17 January 2022.

Background - the Partnership

6. The Claimants are both Bahraini: Mr Al Najjar is a businessman, whilst Dr Fadhul Ali is a consultant plastic surgeon. They are brothers-in-law. Dr Fadhul Ali met Mr Majeed at university in Iraq and introduced him to Mr Al Najjar. They all became close friends. Mr Majeed it seems moved to London in the early 1990s, but he remained in touch with Dr Fadhul Ali.

7. In 2007, Mr Al Najjar decided to purchase a flat in London. At the suggestion of Dr Fadhul Ali, he met Mr Majeed at the Royal Lancaster Hotel in London. At that time, Mr Majeed lived in a small flat with his wife (Mrs Ismail), who is the second defendant in these proceedings, his brother and sister-in-law.

8. Mr Al Najjar says that he and Mr Majeed agreed that Mr Majeed would help Mr Al Najjar invest in property. In his Defence, Mr Majeed accepts that an oral Partnership Agreement was reached. This was in the context of Mr Majeed and Dr Fadhul Ali having agreed that they would invest together in property "on a larger scale".

9. As to this partnership, it seems tolerably clear from what the Claimants have said in evidence and what was pleaded in the Defence, that the Claimants provided capital contributions, whilst Mr Majeed took on the role of identifying properties for purchase, development and letting. It was Mr Majeed that would arrange the refinancing on the properties purchased as partnership assets, subsequent to any building or refurbishment works that he judged necessary. It was also Mr Majeed that appeared to assess the rental income realisable on partnership properties and thus the extent to which a refinancing was practicable. Provided that the loans secured on the properties could be serviced by the rental income, it seems that in the early stages of the partnership, surplus cash was distributed to the partners.

10. From the outset of the partnership, a difficulty arose insofar as the Bahrain-based partners were provided with limited information on the acquisition, financing and disposal of partnership assets; nor were they properly informed of the capital contributions, if any, being made by Mr Majeed. It appears that nonetheless the Claimants remained trusting of Mr Majeed, despite his sometimes aggressive reaction to enquiries about the performance of the partnership. They accepted his general assurances that all was going well with the business.

11. On the evidence that I have read, and albeit that as asserted, there might very well have been contributions beyond this, I am prepared to find that the Claimants made contributions to the capital of the partnership, between May 2009 and July 2015, as claimed at paragraph 16 of the Particulars of Claim. The funds were applied to the bank account which had been designated by the parties as the account into which the partnership contributions would be deposited: this was held at the Ahli United Bank (the **AUB Account**).

12. The contributions of the Claimants took the form of funds paid by:

a) Pintor Paintings, a Bahrain company owned by the First Claimant - £ 670,768.90;

b) the Claimants to Salfiti LLP and then paid into the Ahli United Bank Account – £472,655;

c) the Claimants to Trinity Solicitors LLP and then paid into the Ahli United Bank Account - £233,000;

d) the Claimants through the AUB, IT Dept Head, Mr AlWazeer - £171,980;

e) the Second Claimant - £135,500; and

f) the First Claimant - £9,000.

13. On the evidence before me from Mr Al Najjar and from Dr Fadhul Ali, I am also prepared to find that Mr Majeed purchased, or arranged to be purchased, as partnership assets:

a) the properties that were listed and set out as Schedule 2 to the Particulars of Claim, that is to say the "FAN Properties";

b) the properties particularised in Schedule 3 to the Particulars of Claim, being the "Trust Properties" acquired in the name of Mrs Ismail;

c) the shares in the companies (the **Partnership Companies**) used as vehicles for the acquisition of partnership assets, being,

(i) TX14 Limited (a BVI Company),

(ii) Millhouse (Slough) Limited,

(iii) W9 Property Limited, and

(iv) Property Express Limited (a Seychelles Company).

14. I will return later in this judgment to the position with:

(i) FN Property Limited (**FN**),

(ii) DX9 Property Limited (a BVI Company) (**DX9**),

(iii) SL2 Limited (**SL2**),

each being a company which the Claimants say belonged to the partnership.

15. It was explained to me by Mr Hornett, that all of the property assets held by the Partnership Companies, save for those owned by DX9 and SL2 have been repossessed and sold by Receivers appointed under the provisions of the Law of Property Act 1925. Indeed the only other partnership properties yet unsold are the various Trust Properties.

16. Returning to the evidence touching upon the running of the partnership, there appears little doubt that Mr Majeed failed to perform the obligations set for him in the partnership. There seems to have been a wholesale failure on his part to account faithfully to his fellow partners as to dealings with Partnership property. Mr Al Najjaar describes, at para 21 of his witness

statement, how he was, as it were, kept in the dark by Mr Majeed in regard to various of the partnership assets:

> "21. I do recall however that Mr. Majeed kept changing the companies used to run the Partnership and rarely kept us informed on any details of the purchases and so before commencement of the case I was unaware of most of the companies used. I know that he opened FN Property initially and am aware of the W9 company (which I discuss more fully below). I didn't have any knowledge of Property Express Limited until after we saw the Hoffman Bokaei ledger accounts from CRS. I am also aware that 77K was the company used to pay our rental income - again I deal with this more fully below.
>
> 22. I was aware of most of the partnership properties referred to in my Statement of Case from the updates from Mr. Majeed although the investigations undertaken since the commencement of this case has shown me that there were properties and companies I was not aware of and that the level of borrowing that Mr. Majeed was securing against these properties was far higher than I had ever suspected at the time.
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> 23. In particular I was aware that two companies had been established outside of the United Kingdom (in the British Virgin Islands) to ultimately hold the Bath Road Project and the Chippenham Mews/Harrow Road Project. These companies were DX9 Property Limited and TX14 Property Limited. I also know from Abdul Shaheed that Mr Majeed requested DX9 Property Limited was transferred from him to Mr Majeed around 2016 however I do not know why or what this was for. I had also not heard about SL2 Property or the Driving Test Centre until we had received the Hoffman Bokaei ledgers."

17. In his evidence, Dr Fadhul Ali says this at [26] / [27]:

> "The breakdown in connection between them started to lead me to ask Mr. Majeed about many issues relating to our properties and investment. Whenever I asked him he would always become upset about my brother-in-law. He would answer my questions but with no evidence and if he did give any evidence it would either not be related, or was by presenting unsigned papers. At the same time, he would always put blame on my brother-in-law. This continued to be a routine: my brother-in-law would ask me questions, I would ask Mr. Majeed the same questions, but I would usually receive vague answers.
>
> "In around 2016,1 am not sure about the time, I received a call from Mr. Majeed informing me that he wanted to distribute the properties between us, and he will take a number. I cannot remember or contextualise the number he told me because I didn't even know all the properties we had. He was just telling me "this number will be for me and the others will be for you and your brother", without knowing how he would distribute them, how much was the value of each, and on which basis he would do it. I told him the idea of the division might be a good idea, but I didn't comment on the division details because I really did not know the full details of these properties. At that time, I remember he told me that I will give you more than me. How, I don't know."

18. Further on his evidence, Dr Fadhul Ali adds this [39]:

> "Up until 2019 we were receiving rent from the flats which we purchased: Flat 4,178 Southfield Road, 44 Gunnersbury lane, 275 Uxbridge and 63 and 93 the Vale. The amounts were up and down depending on the month which was because, as we understood from the information provided by 77k Limited, some flats would have a positive balance and some a negative balance (after construction costs) (an example of that owned it [*sic*]. We discovered however that Mr. Majeed had taken out large loans over the Bath Road land and he refused to explain where the money generated by those

mortgages had gone and refused to help repay it. As such the bank repossessed the land and we lost our investment in it.

[36] (*sic*). I was also aware that Majeed had set up some companies in the British Virgin Islands although I did not know the details. One of those (TX14 Property Limited) is still in my name. Another of those companies was DX9 Property Limited. Although I did not recall it until recently I have been shown that he also asked me to sign authorisations allowing him to transfer money from these companies' accounts with Qatar Islamic Bank to Capital Investments & Brokerage in Jordan and to allow him to take money out of these companies' accounts and undertake transfers. I do not know why he asked me to do this but trusting him as I did at this time I believe I would have signed them."

19. Whilst the Claimants make much of the failure of Mr Majeed to account to them in respect of his dealings with the partnership properties, the purchase and sale of them, and the results of their refinancing and the accumulated rental yield, the breakdown in the relationship ultimately came into sharp focus as a consequence of the criminal proceedings in which Mr Al Najjar became embroiled because of a number of planning law transgressions for which only Mr Majeed could have been responsible. Mr Al Najjar explains what happened in his Witness Statement at [35] *et seq*:

"After 2015 the relationship between myself and Mr. Majeed became more distant. In 2017 I received an email from Qatar Islamic Bank that there was a criminal violation on the 275 Uxbridge Road Property's planning permission (a property held in my name). I forwarded this on to him and when we asked him how this happened, he said "there are rules stating that, if you violate the planning permission for 4 years, and the council did not discover it, then the existing property will be certified by the council." We informed Mr. Majeed and emphasized many times that he should not violate the rules and regulations applying to our business in the UK. He confirmed several times that he would never misuse the PoA. Mr. Majeed described the matter as a misunderstanding which although I was confused I accepted at the time (as the matter appeared to have been resolved).

36. In around 2016 or 2017, Mr. Majeed started making decisions by himself and he started to "allocate" the properties without any discussion with us - that is to say he started describing certain properties developments as "his" and others as "ours". I disagreed with this approach as I felt he was trying to take the good projects and give us the bad ones.

37. In 2019, A.Shaheed discovered that Mr. Majeed misused our trust and was not honest when he discovered that the Slough project had started a long time back, without notifying A. Shaheed and Mr. Majeed had taken a mortgage of £3.5m from the bank under A. Shaheed's name (through Millhouse Slough Limited), with him (Mr. Majeed) as a guarantor on the Bath Road Property. This was despite the fact that when he had previously come to Bahrain, we had a meeting with him in A. Shaheed house and he gave promises to us that he will not get any mortgages on this building, as he didn't have any authority to do so. At that time A. Shaheed realized Mr Majeed was evading, defrauding and stealing from us.

38. A. Shaheed requested Mr. Majeed to send all the documents related to Slough and Chippenham Mews to him, but Mr. Majeed started sending hand written papers which had no value or meaning.

39. In October 2019, we decided to go to a solicitor to seek legal advice. In December 2019, I received an email from Ealing Council, stating that an arrest warrant was issued against me for committing a building violation of 93 The Vale without Council planning permission. As can be seen from my reply11, I had no idea what this related to.

40. At that point, A. Shaheed called Mr. Majeed, who was visiting Dubai at that time and informed him that the Council prosecutor sent an email to me and told him about the court decision. Mr. Majeed said he was not aware about it, and he didn't seem to care or pay extra attention to a crucial mater to me. He later said that he would solve this issue in his own way as it was an old problem since 2015. He instructed A. Shaheed that, "Fadhel should not communicate with anyone in the council or a solicitor regarding this issue, until further notice from him and not to answer any call that might come from the UK, until he can look for a solicitor to solve the problem. The next day he contacted A. Shaheed and informed him that "all solicitors were on Christmas holiday and we had to wait until 6 January 2021". He sent this to us via Whatsapp voice message on 19th December 2019.

41. From our investigation later, we discovered, that he had instructed and appointed a lawyer to defend my case without my knowledge. Although he knew that I was travelling to London frequently, he did not inform A. Shaheed about the restraint order issued against me. I never instructed any solicitor to represent me in these proceedings (as I did not know about them) and I never asked Mr. Majeed to do so on my behalf."

20. I shall now move from the troubling evidence from the Claimants of the events leading to the breakdown of relations between the partners, to consider the evidence put before the court as to the value of the contributions made by the Claimants and what value ought to be ascribed to their shares of the likely wealth generated by the performance of their London real property-based business, over the term of the partnership.

The Expert Evidence

21. Before me it was argued that as a result of the deficiencies in the disclosure given by the Defendants, it has been impossible for the Claimants' expert accountant (Mr Daniel Turner) to carry out a proper forensic analysis of the numerous property transactions and money transfers in issue. He has therefore had to adopt an alternative, and necessarily artificial, approach to calculating what capital and rental returns the Claimants ought to have made on their proven capital contributions, had the partnership business been conducted in the usual manner, and without any dishonest misappropriation by the Defendants.

22. This would be, it was submitted, the best evidence of what was due to the Claimants on the taking of an account. As there would be no further participation by the Defendants and no further relevant disclosure, no purpose would be served by ordering any further stages of any account. I was on this basis invited to make an order for payment against Mr Majeed in the value of the amounts Mr Turner calculated should have been earned by the Claimants.

23. In his evidence, Mr Turner confirmed that based upon the bank statements and financial records he had seen, his belief was that the Claimants had made total joint contributions of £3,235,367. He also verified the total rental payments received at £560,255 55.

24. In seeking to arrive at a value for the return on capital in the absence of data pointing to actual returns generated by the partnership assets, Mr Turner applied the average house price index from Kensington & Chelsea, Westminster and Ealing between 2008 and 2021, to the cumulative capital contributions. As for the rental yield, he based that on what was claimed to be a conservative yield of 2.31% for each year.

25. It was conceded that the Claimants would only be entitled to a distribution from a surplus after payment of creditors. Being unable to put before the court clear evidence of the value of the creditors, I was invited to presume that Mr Majeed had received more than sufficient moneys

from the partnership in order to settle the claims of creditors and that he, not the Claimants, should be liable to defray any deficit. Thus, in addition to the indemnity sought in regard to creditor claims I was asked to accept Mr Turner's calculation of a capital return in the value of £1,137,091, and in addition, presumed net rent income (after giving credit for rent received) of £353,631: the total being £4,726,089.

26. In his evidence before me at the trial, Mr Turner explained that the quality of financial information from the running of the partnership was lacking, albeit that it should not have been a particularly complex partnership to manage, given the usual letters from Solicitors and the like. For the 12 properties, the information should not have been complicated

27. Primary accounting records were not available, including notably, bank statements relevant to the transfers of funds and allocations, and day-to-day documents relating to the purchase of properties, including completion statements for sales. He had seen no rental income contracts, such as Tenancy Agreements such as would allow a true and accurate picture of the partnership to be determined.

28. In respect of a Construction Schedule for the 77k company, supposedly the company with a significant role in the management of the portfolio of partnership properties, including the task of collecting rents, only a one page summary had been prepared by Mr Majeed in Excel but no soft copy access was provided. It was in Mr Turner's view a brief summary only of costs incurred for improvements without supporting information or documents to evidence the numbers; no reports on works done or invoices to support funds paid for development, had been provided; this information had just not been disclosed.

29. In order to calculate a value for the capital contributed by the Claimants, Mr Turner started by identifying funds transferred from the Claimants to Mr Majeed. He wanted to be sure that those funds had been transferred as asserted by the Claimants. Mr Turner then checked that the funds had been received by the transferee. In certain instances (marked by "N/A" in his report) it was not possible to confirm the transfer by reference to the subsequent bank statement.

30. Turning to the values ascribed by him to the capital return, Mr Turner explained that he had been able to look at the value of houses recorded at the Land Registry and thus deduce the average increase/decrease in value from the dates of the first capital transfers. He had left it a year, before applying an appreciation rate to arrive at the capital return.

31. As to the rental figures Mr Turner had tried to find market data to establish rent payable on similar properties: he found this from the well-known Property Agents, Knight Frank. Information was obtained from 20 offices in London and the source data was exhibited to his Report. Mr Turner looked at Gross Rental Yields and then applied a Void period of 20 days a year; he also applied a sum for expenses.

The Law

32. I have been asked to accept that the partnership was dissolved not by a notice in writing, but by the commencement of these proceedings. As to the Partnership Act 1890, sections 26(1) and 32, the well-known work on the law of partnership, Lindley & Banks 20th Ed, says this at [24-24]

> "The Partnership Act 1890 contains two separate provisions dealing with the termination of partnerships by notice. Under the rubric, "Retirement from partnership at will", section 26(1) provides:

> “(1) Where no fixed term has been agreed upon for the duration of a partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.”

Section 32 then provides as follows:

> “32.
>
> Subject to any agreement between the partners, a partnership is dissolved—
>
> …
>
> (c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.
>
> In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.”

33. And further at [24.32],

> “Dissolution inferred although no notice
>
> Lord Lindley observed that:
>
> > “A dissolution of a partnership at will may be inferred from circumstances, e.g. a quarrel, although no notice to dissolve may have been given.”
>
> This is still the position, notwithstanding the views expressed in *Hurst v Bryk* and *Mullins v Laughton*, which were clearly not made in the context of a partnership at will. The correctness of this proposition (and the potential application of the principle to partnerships for a term) is confirmed by the decision of the Court of Appeal in *Chahal v Mahal*, where it was held that the incorporation of a partnership business will usually (but not invariably) result in a dissolution being inferred. Such an inference was also made in *Hopton v Miller*, where the dissolution was precipitated by a quarrel between the partners. Equally, it should be noted that the court will not be too ready to infer a dissolution, as illustrated by *Rowlands v Hodson*, where it was held that a partnership would continue notwithstanding the fact that one partner might have ceased to participate actively in the partnership business, either wilfully or due to circumstances beyond his control. In such a case, even nominal continuing participation will be sufficient to keep the partnership in existence. Similarly, no inference of dissolution was made in *Barber v Rasco International Ltd*. The court in particular observed that merely discussing a new structure for the partnership business without any final agreement will clearly not suffice. It has also been said that neither laches nor abandonment can, of themselves, bring about a dissolution.”

34. What then is the position with the assets of the partnership upon the dissolution? Halsbury's Laws of England/Partnership (Volume 79 (2020)) in its treatment of realisation and disposal of assets says this at [204].

> “*Upon a general dissolution, each partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the partnership property applied in payment of the firm's debts and liabilities, and after such payment to have the surplus assets applied in payment of what may be due to the partners after deducting what may be due from them to the firm. For this purpose, any*

partner or his representatives may bring a claim to have the business and affairs of the partnership wound up by the court with all proper accounts and inquiries. Subject to any contrary agreement, this usually implies a right to have the assets sold to provide a fund for discharge of liabilities, and for the adjustment of the rights of the partners among themselves, but the court exercises a supervisory jurisdiction over the winding up of partnerships and has a discretionary power to fashion such order as is appropriate in all of the circumstances."

35. Having made it clear that in general, upon a dissolution, a court will order a sale of the partnership assets, Halsbury's Laws goes on to provide at [207],

"*A sale under an order of the court will be carried out in the manner most beneficial to the common interest. Such an order may be made on motion before trial, where the partnership is clearly dissolved, or even where it is not dissolved but the position of the business is daily growing worse. The matter is often referred to a master in order that he may consider the best course to pursue, and the best way of selling. When one partner has a greatly preponderant interest in the concern, liberty may be given to him to submit proposals for the purchase of the shares of the other partners. The court may give liberty to all or any of the partners to bid, but in that event the conduct of the sale is not given to those who have such liberty; nor may they interfere in any way with the sale. If necessary, a receiver and manager may be appointed until sale. If the receiver conducts the sale, he is subject to the court's directions and is not invariably bound to accept the highest price for the property.*"

Discussion

36. It seems to me perfectly reasonable to submit, as Mr Hornett does, that the dissolution of the partnership was achieved by the commencement of proceedings herein on 23 June 2020. I don't think that there can be any doubt that the issue of court proceedings against a fellow partner, alleging a wholesale breach of partnership duties and claiming an account, can be treated as anything other than indicative of a "quarrel".

37. It seems to me that these are the very circumstances in which it is proper to infer a dissolution of a partnership at will. I would be surprised if Mr Majeed was in any doubt by this point that his partnership was being brought to an end.

The Issues in dispute

38. In light of the evidence from the Claimants, I have little difficulty in finding that there was a partnership between them and Mr Majeed. I have seen nothing that would suggest to me that the partnership was on anything other than the basis that the partners would have equal shares in that partnership and thus were to share equally in the profits and capital.

39. Insofar as it is relevant to the account which I am in all the circumstances of this case prepared to order, I have heard no evidence as would persuade me that Mrs Ismail was a partner. I certainly see the point advanced by Mr Hornett that it would seem at once inconsistent with a partnership relationship for Mrs Ismail to have executed deeds of trust in respect of a number of partnership properties in favour of Mr Al Najjar.

40. Upon the dissolution of a partnership the law is clear: the assets of the partnership will be sold by order of the court unless there is good reason to hold otherwise. I see no good reason on the evidence before me in this case. It is equally clear that the assets of the partnership must be applied to the debts and liabilities of the partnership, in this case, principally to those who have advanced moneys to allow for the purchase of the partnership properties. In the ordinary

course, any surplus arising would be distributed amongst the partners equally (or in accordance with the provisions of the partnership deed). In order to assist with achieving this objective, the court would ordinarily order an account to be taken.

41. In light of the peculiar circumstances of the dissolution and the reasons for the absence of the Defendants at trial (as found by Leech J), as I was I invited to do by Mr Hornett, I proceeded to treat the trial as the taking of the account of the Partnership. It was certainly clear to me on the evidence that Mr Majeed had singularly failed to properly account to the Claimants for the assets of the partnership during the period of the Partnership. Indeed it was that very failure to provide disclosure of dealings with the assets of the partnership that led to the unusual, and not made without very good reason, Debarring Order.

42. In light of the evidence of Mr Turner, taken together with the evidence from the Claimants themselves, I am prepared to find the capital contributions, rental income and return on capital amounts, in the values claimed. In my judgment, Mr Turner offers as sensible a basis for calculating those values as in all the circumstances, including the dearth of available direct evidence, might be conceived. In any event I feel little diffidence in proceeding on this footing having regard to the approach of the court in *Walmsley v Walmsley* (1846) 3 Jo. & Lat 556, which Mr Blackett Ord in the fifth edition of his leading work on the law of partnership, is prepared to treat as authority for the proposition that an inference may be drawn against a delinquent partner in circumstances broadly on all fours with the instant case.

43. The proper order is then for there to be a sale of the partnership properties, to be overseen by a Master from whom the necessary orders for the conduct of the sale may be made. But the question then arises which properties? Issue was joined on the pleadings as to three companies and the assets held by them, that is to say FN, DX9 and SL2.

44. In their evidence before me, both Mr Al Najjar and Dr Fadhul Ali were categorical: there had never been a suggestion that FN was to be held by Mr Majeed outside the Partnership. There was no agreement for properties, that could have been partnership assets, to be bought and held as personal assets. It was also adduced in evidence that large sums were contributed to the partnership in 2008 at just the point that FN was established. The company was in fact dissolved in 2017 but might, the Claimants say, have some relevance to future insolvency proceedings or for enforcement.

45. Mr Majeed accepts that DX9 was originally a partnership company. It is asserted on the Defence that the ownership of DX9 passed to Mr Majeed as part of a transaction that saw the Millhouse company pass to Dr Fadhul Ali. Whilst Dr Fadhul Ali accepted that he executed share transfer documents as asked by Mr Majeed, there was no swap of shares or companies mentioned. He signed the documents because he was asked to by Mr Majeed and he trusted him. There is no basis for me to find anything other than that DX9 was an asset of the Partnership. There is no real need for me to enter into an enquiry as to the relative economic benefit of such a transaction; nor need I look at the evidence that clearly suggests that after the event, DX9 was nevertheless treated as an asset of the Partnership. As Mr Hornett submits, the mere transfer of the legal ownership of the share in any event does little to advance the case for Mr Majeed given the obvious position with the beneficial interest which would, on the evidence before me, have remained within the Partnership.

46. As to SL2, this was a company originally established in 2017, and its shares were held by an admitted partnership company, TX14 Limited. The shares were quickly transferred to DX9. Given my finding in regard to DX9, it follows, without more, that SL2 must be an asset of the Partnership. Had it been necessary, I would have made the necessary findings in regard to the

inference that the assets of SL2 had been acquired through the use of partnership funds however it is in the circumstances unnecessary for me to develop that reasoning.

47. I now turn to the so-called Trust Properties. These are the properties listed in Schedule 3 attached to the Particulars of Claim. Each was purchased in the name of Mrs Ismail. On 25 September 2016, Mrs Ismail executed three separate Deeds of Trust declaring that she held each Trust Property on trust for Mr Al Najjar absolutely as from the date of purchase, and that Mr Al Najjar was entitled to all income derived therefrom and the net sale proceeds of the same after certain deductions.

48. The Defence admits that the Trust Properties are partnership properties, however it is suggested that 50% of the property at 366 Finchley Road is owned by a third party, namely a Mrs Al Badri. In light of the admission and in the circumstances of the other orders I am prepared to make in regard to the Partnership, I agree with Mr Hornett that it must follow that there should be declarations and orders for sale of the Trust Properties: but I must address the position of Mrs Al Badri, who is not a party to these proceedings. I was told that she was represented for a time by the same solicitors who at one point represented the Defendants. I am satisfied that the right course so as to protect any interest that Mrs Al Badri might have is to give her permission to apply in relation to the proceeds of sale. If no application is made after the passage of a reasonable period of time, the net proceeds of sale must be for the account for the Claimants.

49. By way of summary, my findings are that:

a) the properties in Schedule A to the Order made by the court at the conclusion of the trial on 22 February, are to be considered as properties of the Partnership;

b) the shares of those companies listed in Schedule B to the said Order, also belong to the Partnership;

c) the Claimants are entitled to any surplus arising on the sale by the Law of Property Act Receivers, of the properties in Schedule A;

d) the Trust Properties together with the properties owned by DX9 and SL2, be sold; and

e) any surplus amounts arising by reason of the sales referred to at c) and d) and being paid over to the Claimants, shall be treated as being in satisfaction of amounts due to them by way of net rental income, return on capital or repayment of capital.

The Planning Breach

50. I have already in this judgment made reference to the evidence touching upon the criminal proceedings of which Mr Al Najjar had received notice. It seems that the relevant local authority commenced proceedings against Mr Al Najjar, due to infringements of planning law in respect of two properties owned by the Partnership. The Claimants say that Mr Majeed accepts that he was the partner responsible for the development and management of any properties held by the Partnership. If there was a breach of any planning law, giving rise to criminal liability, it must be a matter for which Mr Majeed is responsible.

51. It is on this basis that this court, self-evidently not exercising any criminal jurisdiction, is prepared to declare that Mr Majeed was responsible for the breaches of planning permission in relation to the planning enforcement notices affecting the two London properties of the

partnership at Shirland Road and The Vale. What will be the position as to liability under the criminal law, will be a matter for the court with jurisdiction over those planning matters.

52. The Claimants also ask for an indemnity against any claims brought by creditors of the Partnership. Rather than accept that any debts due from the operation of the partnership should be taken into the reckoning on the account, the Claimants submit that by reason of the detailed evidence that they have put before the court demonstrating a conspicuous failure by Mr Majeed to account properly for the wealth of the Partnership, it should be assumed against Mr Majeed that he has already had a sufficient share of that partnership wealth, such that any remaining debts should be settled by him. Not only has Mr Majeed by reason of his conduct in these proceedings, deprived himself of the opportunity to challenge this assertion on the facts, because the evidence satisfied me that there has been on his part a flagrant and persistent breach of his duties of good faith to account to his partners, I am persuaded that it is just to excise any doubt against him. The court has the discretionary power to fashion such an order as in all the circumstances is appropriate and thus I will find that the Claimants are entitled to the indemnity they seek in respect of further creditor claims, notwithstanding the order that I am also prepared to make in respect of the capital returns, as calculated by Mr Turner.

53. It also follows that as a result of the matters covered by this judgment the Claimants must have their costs, to be assessed on the indemnity basis if not agreed.